

This letter concerns enrollment fees and the transfer of prescription drugs. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

January 31, 2006

Dear Xxxxx:

This letter is in response to your letter dated April 22, 2004, in which you request information. We apologize for the lengthy delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request Illinois' opinion on the taxability status of an enrollment fee and transaction fee applicable to the new Medicare Prescription Drug Discount Card Program. The program enables Medicare beneficiaries to obtain discounts of 10 to 25 percent on prescription drugs only. ABC., herein after [sic] 'the company,' will be working with a third party drug card sponsor, here in after [sic] 'the processor.' The company will collect a \$30 annual enrollment fee and transaction fees (\$1 to \$3) will apply each time a beneficiary uses his/her discount drug card. The company will remit both the enrollment fees and the transaction fees to the processor; thus, neither will represent revenue to ABC. Since the processor will control the discount drug card, beneficiaries can use the card in multiple pharmaceutical businesses – not just in ABC Pharmacies.

Will the enrollment fee and transaction fee be subject to sales tax (for either the company or the processor) based on the facts presented above?

Your assistance in this matter is greatly appreciated. Feel free to contact me with further questions.

DEPARTMENT'S RESPONSE:

Enrollment fees are not generally subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax liability because they do not involve the sale or transfer of tangible personal property.

In regards to the transaction fees for prescription drugs, the providing of prescription drugs by pharmacies are considered service transactions. If tangible personal property is transferred incident to the providing of a service, those transfers may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. See 86 Ill. Adm. Code 140.101 through 140.109. A serviceman's liability may be calculated in one of four ways: 1. separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Drug stores that fill prescription are generally required to otherwise be registered under Section 2a of the Retailers' Occupation Tax Act because they sell tangible personal property in addition to filling prescriptions. Those types of stores would normally fall within the 3rd method described above. Since the tax base to those types of stores for a prescription drug is the cost price of the prescription drug, the transaction fee paid to the store does not impact the amount of Service Occupation Tax incurred on that service transaction. Without further information regarding the contractual obligations of the processor, we cannot provide you with any guidance regarding the processor's tax liabilities.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
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TDC:msk